SLHC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(17)

मामला क्रमांक Cr.A. No. 659/04 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

CRIMINAL APPEAL NO.659/2004

APPELLANT (In Jail) Mangru Ram, aged about 23 years, S/op Shri Naan Ram Kumhar, Occupation-Labour, R/o Village Ghatmunda, Police Station Kunkuri, District Jashpur, Chhattisgarh.

Vs

RESPONDENT State of Chhattisgarh, Through: SHO, Kunkuri, District Jashpur, CG.

Present:
Mr. Ranbir Singh Marhas, Advocate for the appellant.
Mr. S. Yadav, Dy. Government Advocate for the respondent-State.

ORAL JUDGMENT

(15th November, 2007)

Per Dhirendra Mishra, J:

This appeal is directed against the judgment of conviction and order of sentence dated 30.4.2004 passed in Special Case No.32/03 whereby learned Special Judge under Scheduled Tribes & Scheduled Castes (Prevention of Atrocities) Act, 1989, Jashpur has convicted the appellant under Section 376 of Indian Penal Code (for short 'IPC') and sentenced to undergo R.I. for 10 years and to pay a fine of Rs.10,000/-, in default of payment of fine to undergo additional R.I. for 10 months.

Case of the prosecution, in brief, is that on 11.10.2002 an offence under Section 376 of the IPC and Section 3 (i) (xii) of the Scheduled Tribe & Scheduled Caste (Prevention of Atrocities) Act, 1989 (for short

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'the Act') was registered against the appellant on the basis of report of the prosecutrix that 5-6 months before the date of filing of report the appellant had forcibly committed sexual intercourse with her and thereafter repeated the above offence 20-25 times, however, she did not disclose this fact to anybody out of fear and when her mother discovered the sign of pregnancy in her, she disclosed this fact to her mother.

The prosecutrix was sent for medical examination to the Community Health Centre, Kunkuri where Dr. (Mrs.) Indubala Minz (PW-15) examined her and gave her report [Ex.P-18] that prosecutrix is carrying pregnancy of 28-30 weeks'. Mark sheet of the prosecutrix was taken into possession vide seizure memo of Ex.P-2, whereas, relevant entries in the admission register of Ex.P-5-C was taken into possession vide seizure memo of Ex.P-4, according to which the date of birth of the prosecutrix is 23.7.1989.

After completing the investigation, the charge sheet was filed in the Court of Chief Judicial Magistrate, Jashpurnagar and the same was received on transfer for trial by the trial court. During investigation the prosecution examined 16 witnesses in all and thereafter statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the evidence available against him in the prosecution case and pleaded false implication. Learned trial court after hearing learned

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counsel for the respective parties has convicted and sentenced the appellant under Section 376 of the IPC, however, he has acquitted the appellant of the charge under Section 3 (i)(xii) of the Act.

Learned counsel for the appellant submits that from the evidence available on record it would be evident that the prosecutrix and accused were in love with each other and in fact, the prosecutrix was the consenting party. So far as the evidence regarding date of birth is concerned, the prosecution has failed to prove by leading admissible and reliable evidence regarding date of birth of the prosecutrix, as the person who has made the entries in the admission register has not been examined and there is no evidence that the date of birth recorded in the admission register was in fact given on the basis of exact date of birth of the prosecutrix. The prosecutrix was not even subjected to ossification test and therefore, in the absence of cogent and reliable evidence regarding date of birth of the prosecutrix, the finding of the trial court that the prosecutrix was below 16 years of age at the time of incident cannot be sustained.

On the other hand, learned counsel for the State has supported the impugned judgment.

I have heard learned counsel for the parties. I have perused the impugned judgment as also the evidence available on record.

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आदेश पत्रक (पूर्वानुबद्ध)

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The conviction of the appellant is based on the statements of the prosecutrix (PW-1), father of the prosecutrix Beneram (PW-2), Poyaram (PW-3) and Sunni Bai (PW-4) mother of the prosecutrix. The prosecution has also examined Lohara Ram (PW-5), Head Master of Girls Primary School, Ghatmunda, who has proved the admission register of Ex.P-5C by producing the original admission register and the trial court on the basis of the statement of this witness has arrived at the conclusion that the date of birth of the prosecutrix is 23.7.1989. Lohara Ram (PW-5) has stated in his deposition that he is Head Master in the Girls Primary School, the name of the prosecutrix is entered at Sr. No.271 of the admission register and her date of birth is mentioned as 23.7.1989. There is no cross-examination by the defence and thus, the statement of this witness stands un-rebutted and therefore, the trial court has not committed any illegality by assessing the age of the prosecutrix to be less than 16 years at the time of offence.

So far as the commission of offence is concerned, the prosecution to establish this fact has examined the prosecutrix (PW-1), who has stated in her deposition that one year before her examination she had gone in the Barat of appellant's brother to Village Kodkel and had returned to Village Ghatmunda in the night. On the date of incident when she was sleeping in the house of the accused, the accused took her to another room and forcibly raped her and thereafter threatened her

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आदेश पत्रक (पूर्वानुबद्ध)

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not to disclose this fact to others. The accused thereafter also used to have sexual intercourse with her on 8-9 occasions, as a result of which she became pregnant. As she denied in her cross-examination-in-chief that she became pregnant through the accused, a leading question was put to her by the prosecution and in reply of which she has admitted that she told her parents that she is pregnant from accused Mangraram.

In the cross-examination by the defence she has admitted that their relationship was consensual. There is evidence available on record that an affidavit was filed by the father of prosecutrix Beneram before the trial court wherein the allegation of intercourse was denied. However, the version of the prosecutrix is duly corroborated from the statement of her father Beneram (PW-2), Poyaram (PW-3) and mother Sunni Bai (PW-4), who have stated that the prosecutrix told them that she is carrying pregnancy through accused Mangraram. The defence has not been able to elicit anything to make the version of the prosecutrix unreliable or untrustworthy.

So far as the prosecutrix being the consenting party is concerned, it has already been held that the date of birth of the prosecutrix is 23.7.1989 and as such, at the time of incident she was 12-13 years of age and therefore consent, if any, is immaterial.

On the basis of the aforesaid analysis, this Court is of the considered opinion that the trial court has not committed any illegality

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आदेश पत्रक (पूर्वानुबद्ध)

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	or infirmity in convicting & sentencing the appellant under Section 376 of the IPC. However, taking into consideration the fact that the prosecutrix and her parents were ready and willing to marry the prosecutrix with the appellant and further considering that a male child was born to the prosecutrix through the appellant and parties to the proceedings have expressed their desire to compromise the matter inter-se, in the considered opinion of this Court ends of justice would be served if the appellant is sentenced to undergo R.I. for 7 years and to pay a fine of Rs.500/- minimum sentence prescribed under Section 376 of the IPC in place of R.I. for 10 years and to pay a fine of Rs.10,000/-. In the result, the appeal preferred by the appellant is partly allowed and while maintaining the conviction of the appellant under Section 376 of the IPC, the jail sentence imposed upon the appellant is hereby reduced and instead of R.I. for 10 years and to pay a fine of Rs.10,000/-, in default of payment of fine to undergo additional R.I. for 10 months, the appellant is sentenced to undergo R.I. for 7 years and to pay a fine of Rs.500/-, in default of payment of fine to undergo additional R.I. for 2 months. Certified copy as per rules. **Sd/-** **Dhirendra Mishra** **Judge**	
Roshan/-		